IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3748 OF 2006

Umesh Shamrao Dedge)
Age: 42 years, Occ:Service,)
Residing at 13/A, Kesarkar)
Peth, Satara.) ...Applicant

Versus

The State of Maharashtra) ...Respondent

Shri C.K.Pendse i/by Shri M.S.Mehta for the Applicant.

Shri U.V.Nikam, A.P.P for the Respondent.

CORAM : A. S. OKA, J.

DATE : NOVEMBER 16, 2006.

ORAL JUDGMENT:

1. Rule. The learned A.P.P waives service for the Respondent.

2. Taken up for hearing forthwith. The Applicant is being prosecuted for an offence under the Prevention of Corruption Act, 1988 before the learned Special Judge, Satara. On 21st February, 2005, examination-in-chief of P.W.1 was recorded. An Application was made on that day on the behalf of the Advocate for the Applicant for postponing the cross-examination. Accordingly, the case was adjourned

to 16th March, 2005. On that day the Advocate for the applicant was not available. An Application was made for adjournment which came to be rejected. The learned Trial Judge passed an order "No cross-examination". On 25th July, 2005, another application was made by the Applicant for recalling the P.W.1 for cross-examination. The said Application has been rejected by order dated 18th September, 2006. By this Application under section 482 of the Code of Criminal Procedure, 1973, the Applicant has challenged the orders dated 16th March, 2005 and 18th September, 2006.

3. The learned Advocate for the Applicant submitted that the order dated 16th March, 2005 was passed on an Application for adjournment which was required to be filed as the Advocate representing the Applicant was out of town. He submitted that between 16th March, 2005 and 18th September, 2006, the trial did not make any further progress. He submitted that an opportunity ought to have granted by the learned Special Judge to the Applicant to cross-examine P.W.1.

4. The learned A.P.P opposed the Application by submitting that 16th March, 2005 was the date fixed as

per the convenience of Advocate for the Applicant and therefore, the learned Judge was justified in passing an order closing the cross-examination. He submitted that for a long period, no further steps were taken by the Applicant and an Application was belatedly moved in July 2005 for recalling the P.W.1. On instructions of the concerned Officer, he stated that further evidence has not been recorded in the case.

5. I have considered the submissions. It appears that on 21st February, 2005, the cross-examination of P.W.1 was deferred on the request made by the Applicant. On 16th March, 2005, the Application for adjournment made by the Applicant was rejected by observing that as per the convenience of Advocate for the Applicant the said date was fixed. The said Application was rejected only on the ground that the Advocate for the Applicant was absent. I have perused the roznama of the case. A copy thereof is placed on record. On 16th March, 2005 the case was fixed on 08th April, 2005. On that day, the case was adjourned as witnesses were absent. On the next date i.e 04th May, 2005, the learned Special Judge was not available and therefore, the case was adjourned to 21st May, 2005.

On that day though the Applicant and his Advocate were present, learned Additional Public Prosecutor and his witnesses were absent. Therefore, the case was adjourned to 08th June, 2005. On that day, the learned Additional Public Prosecutor was absent. An Application at Exhibit 24 was submitted by the Applicant for issuing witness summons for cross-examiantion of the original complainant. On 15th June, 2005 the case was adjourned till 12th July, 2005 for filing reply by the State to the Application at Exhibit 24 and infact, an Application for adjournment was filed by the Additional Public Prosecutor. On 12th July, 2005, the Additional Public Prosecutor was absent. However, the Applicant and his Advocate were present. On 18th July, 2005, case was adjourned as reply was not filed to Application at Exhibit 24. On 25th July, 2005, an Application at Exhibit 26 was filed by the Applicant for recalling P.W.1 for cross-examination. Thereafter, the case was adjourned on 03rd August, 2005, 11th August, 2005, 06th September, 2005 and 15th September, 2005 for passing orders on Application at Exhibit 26. On 07th October, 2005, 22nd November, 2005, 09th December, 2005, 29th December, 2005, 25th January, 2006, 18th February,

2006, 04th March, 2006, 01st April, 2006, 05th May, 2006, 16th June, 2006, 20th July, 2006 and 08th September, 2006, the case was adjourned either for hearing of the Application at Exhibit 26 or for passing order on the said Application. On 18th September, 2006 the order impugned has been passed rejecting the Application at Exhibit 26. Now the next date is fixed as 30th November, 2006.

6. Thus, the perusal of roznama shows that after recording of examination-in-chief of P.W.1, no further progress has been made in trial. In view of this position, the Applicant deserves to be granted one opportunity to cross-examine the P.W.1. Prejudice will be caused to the Applicant-accused if he is not granted that opportunity. He was denied said opportunity as on the date fixed, his Advocate could not remain present in the court for cross-examining the witness.

7. However, it must be made clear that on the day on which P.W.1 remains present, the Advocate for the Applicant will have to cross-examine the said witness and no adjournment will be granted.

8. Hence, I pass the following order:

(i) The impugned Orders dated 16th March, 2005 and 18th September, 2006 are quashed and set aside.

(ii) The Application at Exhibit 26 filed by the Applicant is allowed and P.W.1 Anil Pandurang Bondre shall be recalled by the learned Trial Judge to enable the Advocate for the Applicant to cross-examine him. The learned Special Judge will issue witness summons to the said witness.

(iii) It is made clear that as and when the said witness remains present, he will be cross-examined by the Advocate of the Applicant and the learned Judge will not grant any adjournment for that purpose.

(iv) Rule is made absolute in above terms.

(v) Parties and the concerned court to act upon an authenticated copy of this order.

JUDGE